

NOTICE OF DIRECT FINAL RULEMAKING AND REQUEST FOR COMMENTS ON CHANGES TO RESERVATION AIR CODE

The Southern Ute Indian Tribe/State of Colorado Environmental Commission is seeking comments from interested persons on certain changes to the Commission's Reservation Air Code. The changes include: the codification of certain previously delegated authorities and the inclusion of an "all other incidental powers" provision.

I. Dates. This action is effective on December 26, 2015 without further notice, unless the Commission receives relevant adverse comments by November 26, 2015. If the Commission receives relevant adverse comments, it will publish a timely withdrawal in the same manner in which this notice was published informing the public this action will not take effect.

The revisions to the Reservation Air Code will become effective upon approval by the EPA.

II. Authority under which the changes are proposed.

Authority is vested in the Southern Ute Indian Tribe/State of Colorado Environmental Commission by the *Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation* dated December 13, 1999 ("IGA"), tribal law (Resolution of the Council of the Southern Ute Indian Tribe # 00-09), State law (C.R.S. § 24-62-101), and federal law (Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat.1354) to adopt rules and regulations for air quality programs applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation. The Commission's direct final rulemaking authority can be found in section IV.G. of the Commission's Procedural Rules.

III. Submission of comments.

Please provide any comments no later than November 26, 2015. Please submit your comments to Mark Hutson, Air Quality Program Manager for the Southern Ute Indian Tribe, by one of the following methods:

- E-mail: mhutson@southernute-nsn.gov
- Mail: Southern Ute Indian Tribe/State of Colorado Environmental Commission, c/o Mark Hutson, Acting Air Quality Program Manager, Southern Ute Environmental Programs Division, P.O. Box 737 MS# 84, Ignacio, Colorado, 81137
- Hand delivery: Air Quality Program, Environmental Programs Division, Southern Ute Indian Tribe, 71 Mike Frost Way, Ignacio, Colorado, 81137

IV. Supplementary Information and summary description of Code changes.

The Commission is revising the Reservation Air Code (Code) by: (1) adding an express statement of the Tribe's Clean Air Act Section 114 (CAA 114) pre-permitting investigation and information request authority (this authority is already implicit from the EPA's delegation of the Part 70 program but an express statement will reduce the risk of a challenge to the Tribe's exercise of that authority), (2) adding a provision confirming the Tribe's authority to issue emergency cease-and-desist orders (this authority is granted to the Tribe under the Intergovernmental Agreement Concerning Air Quality Control on the Southern Ute Indian Reservation but its express inclusion in the RAC would reduce the risk of a challenge to the Tribe's exercise of that authority), and (3) adding an "all other incidental powers" provision.

The CAA 114 investigation and information request authority will be added under RAC §1-105. The proposed language is derived directly from the content of CAA 114 and will codify the Tribe's authority to inspect any air emission source for the purpose of investigating any actual, suspected, or potential source of air pollution or ascertaining compliance with any other requirement of the Code. The proposed language also outlines the Tribe's authority to request information from owners or operators of emission sources on the Southern Ute Indian Reservation for the purpose of determining compliance with any requirement of the Code or for the purposes of air quality planning, rule development or implementation plans. These revisions will affirm the authorities that were already granted to the Tribe through EPA approval and delegation of the Part 70 operating permit program.

Secondly, language outlining the Tribe's authority to abate air pollution emergencies endangering public health or welfare on the Reservation will be codified under RAC §1-106. The purpose of this addition is to codify the Tribe's authority to, following investigation, issue a written cease-and-desist order, and/or apply to the United States District Court for the District of Colorado for a restraining order or injunction to enjoin sources of air pollution determined to be engaging in any activity involving a significant risk to air quality, or discharging directly or indirectly any air pollutants that constitutes a clear, present, and immediate danger to the environment or human health of the public, or is of such nature to cause extreme discomfort or which makes the habitation of residences or the conduct of business subject to the pollutants extremely unhealthy or disruptive. These authorities were granted to the Tribe under Section VIII.A.(m) of the IGA and in Public Law No. 108-336.

The Commission is publishing this direct final action without a prior proposed rule because it views the changes as noncontroversial and anticipates no adverse comments. If the Commission receives adverse comment, it will publish a timely withdrawal in the same manner this notice has been published informing the public that the action will not take effect. It also will publish a notice of proposed rulemaking and will address the comments on the direct final action as part of that proposed rulemaking.

V. Where a complete copy of the Code and Code changes can be obtained.

A copy of the Code and a redlined version showing the changes is available upon request from the Tribe's Air Quality Program Manager who can be contacted by e-mail, mail, or in person at the addresses noted above. The Code and the exhibit showing the changes also is available at the following website:

<http://www.southernute-nsn.gov/environmental-commission/>

For further information contact: Mark Hutson, Program Manager, Air Quality Program, Southern Ute Indian Tribe, P.O. Box 737 MS#84, Ignacio, Colorado, 81137; telephone number (970) 563-0100 (ext. 2206); e-mail mhutson@southernute-nsn.gov